



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 21, 2022

IN THE MATTER OF:

Appeal Board No. 622728

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 622724, 622725 and 622726, the claimant appeals from the decisions of the Administrative Law Judge filed March 30, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective December 8, 2020 and ending December 27, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$352.50 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622727, 622728 and 622729, the claimant appeals from the decisions of the Administrative Law Judge filed March 30, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective December 25, 2020, only, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$58.75 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622730, 622731 and 622732, the claimant appeals from the decisions of the Administrative Law Judge filed March 30, 2022, which

sustained the initial determinations disqualifying the claimant from receiving benefits, effective December 29, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$2702.50 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$3600.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$945.87 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

In Appeal Board Nos. 622724, 622725 and 622726, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board Nos. 622727, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board

As to Appeal Board Nos. 622728, 622729, 622730, 622731 and 622732, the Board makes the following

FINDINGS OF FACT: The claimant worked for three weeks for a retail establishment as a part-time cashier. The second week of employment the store manager began to ask the claimant personal questions regarding her marriage status. He told her that he was looking for a woman to support him. She informed him that she was a married woman and was uncomfortable with the conversation. The manager told her that this type of talk was common, and he wasn't doing anything to harm her. He told her that if she stayed and gave him

a chance, he could change her life and make her a manager. When the claimant spoke to a coworker about the manager, she was told that he treated all the girls this way. When she told the manager that she was going to complain, he told her that no one would listen to her, and she'd be fired. She did not know how to contact upper management and did not complain. He kept her working in the basement and not on the upper floors with the other workers. The claimant told her husband who advised her to quit. The claimant informed the manager that she was having transportation problems and had to quit her employment. The claimant's last week of employment ended on December 27, 2020.

The claimant filed for benefits on March 25, 2020. The claimant received \$58.75 in benefits for December 25, 2020. When the claimant certified for benefits on January 3, 2020, she certified that she was self-employed.

OPINION: The Board has affirmed the findings of fact and conclusion of law of the Administrative Law Judge, that the claimant told the employer that she did not want to be scheduled for December 25, 2020, because she wanted to spend time with her family and that she was therefore not ready, willing, or able to work on this date and this is the law of the case.

The credible evidence establishes that the claimant was paid \$58.75 in PEUC benefits for December 25, 2020. However, the record fails to establish the claimant improperly certified for that day. The claimant was not confronted with that portion of the certification report which indicated that she was not ready, willing, or able to work during the week ending December 27, 2020. As the record is devoid of any evidence that the claimant made any misrepresentation regarding her availability during that week, either factually or willfully, the overpayment of PEUC benefits cannot be held to be recoverable. Further, as there is no willful misrepresentation as to her availability on December 25, 2020, and the overpayment of benefits is not recoverable, there is civil penalty imposed for this period.

The credible evidence further establishes that the claimant was harassed by her store manager. The manager made improper comments and a quid pro quo offer to her. The claimant offered a documentary statement from a coworker to support her contention that this type of behavior by the manager was not uncommon and that the coworker had witnessed the harassing behavior by this manager with claimant. The coworker also noted that he had made an improper quid pro quo offer to her. We also credit the claimant's contention that when she told the manager to stop and that she was going to complain and that he

froze her complaint by telling her she'd be fired for complaining and that nothing would be done to him. Since he was the individual in charge of the store in which she worked, and the only member of management she had contact with, she had no reason not to believe his threat. We note that though the employer was notified to produce first-hand witnesses to the harassment, the employer did not produce the store manager, even though claimant wanted asked that he be produced. Further, we do not credit the employer's contention that the claimant was the anti-harassment and discrimination policy training at hire. We note that some of the paperwork offered, was not signed by the claimant, and that other paperwork contain illegible signatures. Further, even if the claimant had been given anti-harassment training at hire, as noted above, when claimant stated she would complain she was threatened with discharge. Under these circumstances, we conclude that the claimant had good cause to quit, and she is not disqualified from receipt of benefits.

As the claimant is entitled to benefits, there is no overpayment of PEUC or FPUC benefits based on her voluntary separation from employment. As the claimant is entitled to benefits there is no civil penalty. However, the claimant does not deny that she might have informed the Department that she was self-employed when she certified to benefits on January 3, 2021, only that she doesn't remember if she made the certification. The willful misrepresentation is sustained. However, there are no penalty days imposed.

DECISION: In Appeal Board Nos. 622724, 622725, 622726 and 622727, the decisions of the Administrative Law Judge is affirmed.

In Appeal Board Nos. 622724, 622725 and 622726, the initial determinations holding the claimant ineligible to receive benefits, effective December 8, 2020 and ending December 27, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$352.50 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board No. 622727, the initial determination holding the claimant ineligible to receive benefits, effective December 25, 2020, only, on the basis that the claimant was not available for employment, is sustained.

In Appeal Board No. 622728, the decision of the Administrative Law Judge is modified accordingly, and as modified, affirmed.

In Appeal Board No. 622728, the initial determination charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$58.75 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, is modified to be non-recoverable, and as modified, is sustained.

In Appeal Board No. 622729, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 622729, the initial determination reducing the claimant's right to receive future benefits by 0 effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits, is overruled.

In Appeal Board Nos. 622730 and 622731, the decisions of the Administrative Law Judge, are reversed.

In Appeal Board Nos. 622730 and 622731, the initial determinations disqualifying the claimant from receiving benefits, effective December 29, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$2702.50 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$3600.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are overruled.

In Appeal Board No. 622732, the decision of the Administrative Law Judge is affirmed in part and reversed in part.

In Appeal Board No. 622732, that portion of the initial determination reducing the claimant's right to receive future benefits by 0 effective days on the basis that the claimant made willful misrepresentations to obtain benefits, is sustained.

In Appeal Board No. 622732, that portion of the initial determination charging

a civil penalty of \$945.87 on the basis that the claimant made willful misrepresentations to obtain benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER